CF0000064627

(2)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

CRIMINAL APPEAL NO. 283 OF 2000

(Appeal under Section 374(2) of Cr.P.C.)

APPELLANTS : 1. Mahangu Satnami, S/o Sitaram Satnami, aged 62 yrs., Occupation Cultivation.

Abated

2. Mantram Satnami, S/o Mahangu Satnami, aged 37 yrs., Occupation Cultivation.

Both R/o Village Akoli, P.S. Berla, District Durg (M.P.).

(751) 16/8/2k H.S. Patel

Vs.

RESPONDENT : State of M.P., through District Magistrate, Durg (M.P.).

MEMO OF APPEAL UNDER SECTION 374(2) of Cr.P.C.

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आदेश पत्रक

मामला क्रमांक G.A. 2083 सन् 2000

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. DILIP R. DESHMUKH, JJ.

1-7-2005

Mr. H.S. Ahluwalia, counsel for the appellants.

Mr. Akhil Mishra, Panel Lawyer for the State/respondent.

Oral order.

By this appeal under Section 374 (2) of the Cr.P.C. accused/ appellants Mahangu Satnami & Mantram Satnami have questioned the legality of conviction and sentence passed by the Additional Sessions Judge, Bemetara, vide judgment dated 23-6-2000, in Sessions Trial No.148/1999, whereby learned Additional Sessions Judge after holding the accused/ appellants guilty for the commission of offence under Section 302 read with Section 34 of the I.P.C. sentenced each of them to undergo imprisonment for life and pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for two months. However, third accused Mahesh Satnami was acquitted.

The prosecution case, in brief, relevant for the disposal of this criminal appeal is that on 1-11-1998 at about 8 p.m. when Village Kotwar Shiv Singh (PW-1) was sleeping at his residence, Kripa Satnami came to his residence and informed him that Sarpanch Budhardas has called him. On receiving this information, Shiv Singh went to the house of Budhardas and Budhardas disclosed him that Santu has been murdered by Mahangu & Mantram by attacking with Kudali & Lathi. On this, Shiv Singh went to the house of Santu and saw that the dead body of Santu was lying in the Parchi of the house of Santu. Kejuram was weeping while sitting by the side of dead body. On enquiry from Kejuram, he informed Shiv Singh that Mahangu & Mantram have murdered Santu by attacking with pickaxe &

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Lathi. He also saw injuries on the body of Santu, blood was oozing out of the injuries.

On the next day, Shiv Singh lodged report at Police Station: Berla upon which the Police registered Merg No.45/98, and thereafter, F.I.R. (Ex.P-1) was registered at Crime No.176/98 under Section 302 read with Section 34 of the I.P.C. After registration of the case, investigation was taken up and the Investigating Officer reached the spot, and after issuance of notice Ex.P-3 he prepared the Panchanama of the dead body (Ex.P-4). During the Police custody accused Mahangu gave memorandum Ex.P-5 and in pursuance of that he got recovered the pickaxe under Ex.P-7. Accused Mantram also gave memorandum Ex.P-6 while in the Police custody and he got recovered the wooden Danda under Ex.P-8. Under Ex.P-9 one Gamcha of accused Mahangu was taken into possession. Under Ex.P-10 Tulsi Mala was taken into possession. Site map of the place of occurrence Ex.P-13 was prepared by the Investigating Officer. The body of Santu was sent for post-mortem examination and the doctor after conducting post-mortem prepared post-mortem report Ex.P-14. The doctor found following injuries on the dead body of deceased Santu: -

1. **lacerated wound in the size of 2.5 x 0.5 cms. muscle deep right frontal region;**
2. **lacerated wound in the size of 0.5 x 0.5 cms. muscle deep right parietal region;**
3. **lacerated wound in the size of 4 x 0.5 cms. muscle deep right occipital region;**
4. **lacerated wound in the size of 4 x 0.5 cms. muscle deep left frontal region;**

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5. lacerated wound in the size of 1 x 0.5 cms. muscle deep left parietal region;
6. abrasion (i) 1 x 1 cms. (ii) 2 cms. x 1 cms. lumber region;
7. contusion 10 x 0.5 cms. post-surface of left chest;
8. abrasion 2 x 0.5 cms. over left scapular region; and
9. contusion 5 x 1 cms. post-surface of right chest.

The pickaxe was examined by the doctor and he prepared inspection report Ex.P-15. Ex.P-17 is the examination report of clothes of accused Mahangu. After completion of investigation charge sheet was filed against the three accused persons namely, Mahangu, Mantram & Mahesh, before the Judicial Magistrate, 1st Class, Bemetara, who committed the case for trial to the Sessions Judge, Durg, from where the Additional Sessions Judge received the case on transfer.

The prosecution had examined as many as 12 witnesses. Learned Additional Sessions Judge recorded the statement of the accused persons under Section 313 of the Cr.P.C. in which they have pleaded innocence and stated that they have been falsely implicated in the crime. After hearing the arguments of counsel for the accused and the Additional Public Prosecutor, learned Additional Sessions Judge after placing reliance on sole eyewitness Ashok (PW-12) convicted accused/appellants Mahangu & Mantram, and acquitted accused Mahesh.

We have heard learned counsel for the parties.

Before commencement of arguments, learned counsel for the appellants informed the Court that accused/appellant Mahangu died during the pendency of this appeal. This fact has not been disputed by learned Panel Lawyer. Learned counsel for the appellants furnished a

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Xerox copy of the death certificate dated 2-5-2004 of Mahangu, according to which accused Mahangu died on 2-4-2004 at Akoli.

In view of the above, the appeal with regard to Mahangu stands abated.

Learned counsel for the appellant also submitted that since accused/appellant Mantram was arrested on 3-11-1998 and since then he is in custody, thereby he is in custody since last more than six years, therefore, the appeal may be heard on merit to which learned Panel Lawyer has no objection. Therefore, the arguments were heard on merit.

As far as the question of nature of death of Santu being homicidal is concerned, learned counsel for the appellant has not disputed this fact. PW-7 Dr. V.P. Agrawal has stated that on 3-11-1998 he was posted as Medical Officer, Primary Health Centre, Berla, on that day at about 11 a.m. he conducted post-mortem on the body of Santu on the request of Police Station: Berla, and found that there were nine injuries on his body out of which injury Nos.1, 2, 3, 4 & 5 were lacerated wounds on the right side of head, on occipital region and on frontal region left and right sides of the head. There was one abrasion on the back, one contusion on the chest, one abrasion on the chest, and contusion on the chest. In the opinion of the doctor all the injuries were anti-mortem in nature and the cause of death was shock due to injury on lung and left haemothorax which was the result of injury on head and chest. The nature of death was homicidal. The doctor prepared the report Ex.P-14. Therefore, on the basis of evidence of the doctor it stands proved that the death of Santu was homicidal in nature.

Now, coming to the involvement of accused/appellant Mantram in committing the murder of Santu, conviction rests upon the testimony of

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sole eyewitness Ashok (PW-12), who at the relevant time was of 10 ½ years old.

Learned counsel for the appellant argued that this witness (Ashok PW-12) is a child witness, and the learned trial Court has not put any question in order to ascertain his capacity to understand the questions, and as to whether he was able to understand the sanctity of oath. He further argued that the name of this witness does not find place in the F.I.R. Learned counsel urged that PW-12 Ashok has stated in his evidence that he informed Kotwar Shiv Singh (PW-1) about the incident, whereas, Shiv Singh in his evidence has not stated so, and on the contrary Shiv Singh has stated that he was informed by Kripa Satnami on the direction by Budhardas Sarpanch. He also submitted that as per the evidence of this witness (PW-12 Ashok) the place where the incident took place was surrounded by many houses which were inhabited by persons. In para 9, this witness has stated that about 10 persons were standing at the spot, but none of them have been examined by the prosecution nor they have been made as prosecution witnesses. Learned counsel for the appellant further argued that this witness (PW-12 Ashok) has stated that the accused/ appellant assaulted the deceased with axe, whereas, no axe has been recovered from the accused. Therefore, in view of the above infirmities in the evidence of this witness, the trial Court has wrongly convicted the accused/appellant placing reliance on the evidence of this sole eyewitness.

On the other hand, learned Panel Lawyer argued that there is nothing on record which shows that this witness (PW-12 Ashok) has any animosity against the accused and the evidence of this witness is reliable, and the trial Court has rightly convicted the accused/appellant placing reliance on the evidence of this witness.

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Having heard learned counsel for the parties, we have perused the evidence of this witness (PW-12 Ashok) and other evidence available on record, and judgment of the trial Court. It is admitted position, as per the age given by Ashok himself in his evidence that on the date of examination i.e. 17-5-2000 he was about 12 years of age, therefore, on the date of incident he was 10 ½ years old.

Settled law on the question of placing reliance on the evidence of a child witness is that before placing reliance on evidence of a child witness the Court is required to satisfy with the following requirements (1) before examining the child witness the Court must put questions in order to ascertain that the child witness is competent to testify and understand the questions put to him/her and not prevented from giving rational answers on account of tender age (2) oath should be administered to the child witness only after ascertaining by putting questions that the child witness understands the sanctity of the oath (3) before placing reliance on the evidence of a child witness the evidence must be scrutinized carefully and it should be ascertained, whether the child witness is intelligent enough to understand the questions, there is no likelihood of tutoring or influencing by anyone and if the Court is convinced about the quality and reliability of a child witness then and then only the Court can base conviction on such evidence without corroboration. In other cases it is safe to seek corroboration of the evidence of a child witness.

It is admitted position that the trial Court even though in para 1 of the evidence of PW-12 Ashok in single line has written that the witness is competent to give evidence, but has not put any questions and has not recorded anything which shows that this witness was understanding the sanctity of oath and he was competent to understand the questions. Therefore, it was not safe for the trial Court to convict the accused/

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appellant on the solitary evidence of this witness. There are number of infirmities in the evidence of this witness which create doubt about his presence on the scene of occurrence.

PW-12 Ashok has stated in his evidence that he immediately informed Kejuram & Shiv Singh Kotwar who went to lodge report at the Police Station, whereas, Shiv Singh who lodged the report at Police Station has been examined as PW-1, and he has not mentioned in the F.I.R. or his evidence that this witness (PW-12 Ashok) informed him that he has witnessed the scene. On the contrary, this witness has stated that he was informed by one Kripa Satnami on the direction of Sarpanch. Apart from that in para 9 PW-12 Ashok has stated that he does not know which kind of clothes and of which colour the accused persons were wearing. In examination-in-chief para 4 he has stated that when he was watching the incident no persons were standing nearby, but in contradiction of that in para 9 in last line, he has stated that place of incident was visible from the shop where about ten persons were standing, persons standing at the shop were able to listen the cries from the place of occurrence. He has further stated that persons always remain present near the shop and in the last line he has stated that at that time about 10 persons were present there. But, none of these persons were examined. PW-12 Ashok has further stated that where the incident took place numbers of houses are there which are inhabited and the persons residing in those houses were able to hear the cries. But, no person other than this witness has been examined by the prosecution.

PW-12 Ashok has stated in his evidence that he has not disclosed about the incident to anybody else except Kejuram & Shiv Singh Kotwar. Shiv Singh has not stated in his evidence that this witness has informed

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him about the incident. Kejuram has not been examined on account of his death.

It is also important to note that this witness is nephew of the deceased, therefore, he falls under the category of interested witnesses. It is true that it is settled law that the testimony of an interested witness or related witness cannot be thrown away merely on that ground, but at the same time the Court is required to scrutinize the evidence of such a witness with care and circumspection. When we put the evidence of this witness (PW-12 Ashok) to that test, then in our considered opinion the testimony of this witness does not inspire confidence and fails to come up to the expectation of that test in view of the infirmities in his evidence pointed out earlier.

Further instance on the ground of which the evidence of this witness (PW-12 Ashok) becomes shaky is that he has stated that accused/appellant Mantram was carrying axe and he attacked deceased Santu with that axe, but that axe has not been recovered and no incised wound or cut injury has been found on the body of the deceased. Therefore, even the medical evidence does not support the version of this witness. Even PW-1 Shiv Singh Kotwar has stated that the deceased was a person of bad antecedents i.e. criminal in nature, and used to involve in criminal activities. Other witnesses namely, Budhardas, Kushdas & Ramkhilawan have turned hostile and they have not supported the prosecution case.

Therefore, in view of the above infirmities in the evidence of PW-12 Ashok, the evidence of Ashok does not inspire confidence for placing reliance on the evidence of this witness. It is not safe to base conviction on the solitary evidence of this witness.

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In our considered opinion and for the foregoing reasons the trial Court has fallen in error by placing reliance on the evidence of PW-12 Ashok and convicting the accused/appellant under Section 302 of the I.P.C. for the commission of offence of murder of Santu.

Resultantly, we are not able to concur with the finding of the trial Court, and therefore, finding of the trial Court convicting the accused/ appellant for the commission of murder of Santu cannot be sustained.

In the result, the appeal succeeds and the same is allowed. Conviction and sentence awarded to accused/appellant Mantram by the impugned judgment are set aside and he is acquitted of charge under Section 302 read with Section 34 of the I.P.C. He be set at liberty forthwith, if not required in any other case.

In view of this order, M.(Cri.)P.No.931/2005 stands disposed of.

Parties are entitled for certified copy of this order.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dilip Raosaheb Deshmukh
Judge

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